U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31843875

Date: JULY 11, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a furniture designer who seeks classification under the employment-based, first preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(l)(A), 8 U.S.C. § 1153(b)(l)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Where a petitioner demonstrates that they meet these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner claims to be an individual of extraordinary ability in the arts based on his skills and experience as a furniture designer. The Petitioner provided evidence that he currently owns and operates his own business where he sells the furniture he designs.

The Petitioner does not claim or submit evidence to show that he received a major, internationally recognized award. He must therefore provide evidence showing that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner claim that he has satisfied the elements of the three criteria listed at 8 C.F.R. § 204.5(h)(3)(i), receipt of lesser nationally or internationally recognized prizes or awards; 8 C.F.R. § 204.5(h)(3)(iii), evidence of published material about the Petitioner in professional or major trade publications or other major media; and 8 C.F.R. § 204.5(h)(3)(vii), evidence that the Petitioner's work has been displayed at artistic exhibitions or showcases.

The Director determined that although the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (vii), he did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii) because he did not submit evidence establishing that the articles about him and his work were published in professional or major trade publications or other major media.

In determining whether a petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iii), we first consider whether published materials relate to the petitioner and their specific work in their field. *See* 6 USCIS Policy Manual F.(2)(B)(l), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. If the record shows that the Petitioner met these requirements, we will then decide whether the submitted articles were published in professional or major trade publications or other major media.

In response to the Director's request for evidence, the Petitioner provided a list describing the articles he was submitting as part of the response. For each listed article the Petitioner provided the title, author, date, and publication.[1] Although the Petitioner also listed the intended audience and circulation for each publication, he did not cite the source of circulation data to support its reliability, nor did he provide rankings for the publications to demonstrate that they constitute major media. Further, although the Petitioner included six online articles among his list of publications, he did not specifically articulate why the online articles should be considered professional or major trade publications or other major media, nor did he submit visitation data for these sites or comparisons to other websites to establish that they can be considered professional or major trade publications or other major media. *See id.*

On appeal, the Petitioner contends that the articles he submitted "most definitely appeared in professional or major trade publications or other major media." The Petitioner also resubmits the previously submitted evidence regarding this criterion and states that the publications included "national and international newspapers and major designs magazines . . . with large volume of circulation in Thailand and other countries." However, the Petitioner still has not offered objective supporting evidence to substantiate the circulation data he provided or to establish how that circulation data compares to that of other publications to establish that these sources could in fact be considered major media. Nor has the Petitioner supplemented the record with the publications' respective rankings to demonstrate that they constitute major trade publications or other major media. Likewise, the Petitioner has not submitted visitation data for the websites containing his listed online articles or comparisons to other websites to establish that they can be considered professional or major trade publications or other major media.

For the foregoing reasons, the Petitioner has not established that the evidence he provided satisfies the evidentiary requirement at 8 C.F.R. § 204.5(h)(3)(iii).

Lastly, because the Petitioner has not demonstrated his satisfaction of at least three of the 10 initial evidentiary requirements for the requested immigrant visa category, we need not make a final merits determination as to his eligibility as a noncitizen with extraordinary ability in his field and hereby reserve his appellate arguments in that regard. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant does not otherwise qualify for relief).

ORDER: The appeal is dismissed.

[1] The Petitioner provided foreign articles with their respective translations. However, the translations do not appear to be fully compliant with the regulation at 8 C.F.R. § 103.2(b)(3), which requires the translator of the foreign material to certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Here, the translations contain a notation with the translator's name and initials stated that the translation is "certified correct." There is no confirmation from the translator as to the completeness of the translation or the translator's competency to translate from the foreign language into English as required by the regulation.